

JOHN S. HENSON

IBLA 80-215

Decided April 29, 1980

Appeal from decision of the Idaho State Office, Bureau of Land Management, holding the Madison Group placer mining claim abandoned and void. IMC-45429.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Generally --
Federal Land Policy and Management Act of 1976: Recordation of
Mining Claims and Abandonment -- Mining Claims: Recordation

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2 the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, or the claim will be deemed to be conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4. Timely transmittal of the documents to the wrong BLM Office does not meet the requirements where the documents are not filed in the proper office timely.

APPEARANCES: John S. Henson, pro se.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

John S. Henson appeals from a decision, dated November 23, 1979, of the Idaho State Office, Bureau of Land Management (BLM), declaring the Madison Group placer mining claim abandoned and void for failure to file timely a notice or certificate of location as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976).

Appellant, a resident of Montana, states that the claim is located in Idaho near the Montana border and that access to the claim is from Montana. He alleges that the recordation documents were erroneously mailed to the Montana State Office on October 17, 1979, and were received on October 18, 1979. Further, he alleges that on the same day an employee in the Montana State Office telephoned appellant's office when he was out and did not leave a message. The Montana State Office employee spoke with appellant's wife on October 20, 1979, and informed her of appellant's error in mailing the recordation documents to the Montana State Office instead of to the Idaho State Office. Appellant's wife requested that the documents be forwarded to Idaho. Appellant alleges that the employee in the Montana State Office refused to forward the material unless a letter releasing the employee from personal liability was received. The documents were forwarded to Idaho on October 20, 1979, and received in Idaho on October 23, 1979.

In his statement of reasons, appellant argues that BLM contributed to the late receipt of the documents by not promptly notifying appellant or not promptly forwarding the documents to the Idaho State Office. Therefore, appellant requests that the claims be filed to prevent duplication of paperwork and expense. The original copies and a postal money order of \$5 has been tendered with the appeal, but are returned to appellant with this decision.

[1] Section 314(b) of FLPMA, 43 U.S.C. § 1744(b) (1976), requires the owner of an unpatented lode or placer mining claim located prior to October 21, 1976, to file a copy of the official record of the notice of location for the claim in the BLM office designated by the Secretary of the Interior within the 3-year period following October 21, 1976. Section 314 also provides that failure to timely file such record shall be deemed conclusively to constitute an abandonment of the mining claim by the owner.

The pertinent regulation, 43 CFR 3833.1-2(a), reads as follows:

[§] 3833.1-2 Manner of recordation -- Federal lands.

(a) The owner of an unpatented mining claim, mill site or tunnel site located on or before October 21, 1976, on Federal lands, excluding lands within units of the National Park System established before September 28, 1976, but including lands within a national monument administered by the United States Fish and Wildlife Service or the United States Forest Service, shall file (file shall mean being received and date stamped by the proper BLM Office) on or before October 22, 1979, in the proper BLM Office, a copy of the official record of the notice or certificate of location of the claim or site filed under state law. If state law does not require the recordation

of a notice or certificate of location of the claim or site, a certificate of location containing the information in paragraph (c) of this section shall be filed. [Emphasis added.]

The documents were not received and date stamped in the Idaho State Office on or before October 22, 1979, resulting in a conclusive finding that the claim has been abandoned and is void. 43 U.S.C. § 1744(c) (1976); 43 CFR 3833.4(a).

Assuming, arguendo, that the documents might have reached the Idaho State Office timely if the Montana State Office had forwarded the documents on October 18 rather than October 20, this does not change the result mandated by FLPMA. The burden is on the claimant to file the required documents in the proper BLM Office or bear the risk that it will not be forwarded in time to meet the deadline. C. F. Linn, 45 IBLA 156 (1980). Timely transmittal of documents to the wrong BLM Office does not meet the requirements where the documents are not received in the proper office timely.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Joan B. Thompson
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Edward W. Stuebing
Administrative Judge

